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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

57

DATE: DEC 13 2011 OFFICE: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiaries:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the Vermont Service Center revoked the previously approved nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the petition will be revoked.

The petitioner claims that it is an "art gallery retailing Russian art." The petitioner states that it is a subsidiary of [redacted] located in Russia. Accordingly, the United States entity petitioned United States Citizenship and Immigration Services (USCIS) to classify the beneficiary as a nonimmigrant intracompany transferee (L-1A) pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The beneficiary was initially granted a one-year period of stay to fill the position of President and CEO.

On September 28, 2009, the director revoked the petition concluding that the petitioner did not respond to any of the issues raised in the USCIS Notice of Intent to Revoke ("NOIR") and has not overcome the grounds for revocation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation, dated July 2, 2008; (2) the director's NOIR, dated July 30, 2009; (3) the petitioner's response to the NOIR; (4) the director's September 28, 2009 notice of revocation; and, (5) the Form I-1290B, filed on November 5, 2009. The AAO reviewed the record in its entirety before issuing its decision.

On July 2, 2008, the petitioner filed the Form I-129 (Petition for Nonimmigrant Worker) to employ the beneficiary in L-1A classification for the period of one year to open a new office. The director approved the petition. On July 30, 2009, the director notified the petitioner of his intent to revoke approval of the L-1A petition. In the notice of intent to revoke, the director stated the reason for revocation as follows:

> It has now come to the attention of USCIS that you had misrepresented the scope of the beneficiary's management duties. Information reveal during the consulate processing of the beneficiary's visa requests it became apparent that even though you have claimed that the beneficiary's management duties, as a production development manager, from December 2003 until July 2006. In fact, the beneficiary only worked as an assistant production development manager from January 2006 until March 2006. From December 2003 until January 2006 the beneficiary was employed as an office assistant.

The director also sent a copy of an "Unclassified Memorandum" from the consulate office in St. Petersburg, Russia. The memorandum stated that it did a site visit to the beneficiary's foreign employer and they "found an empty shop in a large business center," and that "neighbors told us the shop had not been in business for at least the past six months." In addition, the memorandum stated that during a "follow-up interview" with the beneficiary, she stated that the "salon has been closed since March 2008," and that she has worked in an executive capacity since January 2007 and not January 2006 as listed on the petition documents. The memorandum further stated that the beneficiary explained that the foreign company was "closed for 'reconstruction' from

January to October 2007," and thus, the "Russian company was in business for three months." In addition, at the time the I-129 was filed, the foreign company was no longer doing business.

The memorandum also stated that during the beneficiary's visa interview, the beneficiary "asserted that the current business telephone number given on her petition was that of the salon; however, it is in fact listed in the St. Petersburg directory as a home telephone number." The beneficiary also could not tell the visa officer in which business center the foreign company is located.

Furthermore, the memorandum stated that the beneficiary was "unable to describe her duties, the number or names of staff," and provided inconsistent information of the number of employees at the foreign company. Finally, the beneficiary stated that she worked as a secretary from January 2006 until January 2007.

On September 1, 2009, counsel for the petitioner responded to the NOIR and stated that it "did not receive copies of the listed above attachments that were supposed to be enclosed with the Consular letter which led to USCIS's intent to revoke the petition."

On September 28, 2009, the director revoked the petitioner and stated the following:

> The attachments referenced in the unclassified memorandum were for USCIS only. Furthermore, the only documents not readily available to you as the petitioner were the photographs taken by the Consulate's Fraud Prevention Unit. Lastly, the purpose of providing the unclassified memorandum was to give you a detailed synopsis of the consulate's officer's interview findings.

On appeal, counsel for the petitioner contends that the beneficiary was employed in an "executive capacity as a full-time General Director (with duties and responsibilities equivalent to those of a Chief Executive Officer) for more than one continuous year (since January 25, 2006 to present time) with the qualifying Russian organization within the three years preceding the filing of the L-1A petition." The petitioner submitted documents to support the claim that the beneficiary was employed abroad in the position of General Director from January 25, 2006. For example, the petitioner submits an affidavit from the beneficiary, dated January 25, 2006, stating that she will start her duties as General Director on that date. The petitioner also submits an employment contract that stated the beneficiary was hired by the foreign company in the position of General Director on January 25, 2006.

In addition, the petitioner submits a payroll summary for the beneficiary for each month of 2007 but the document does not list the foreign company. Furthermore, the petitioner did not submit copies of paystubs or tax receipts or bank statements evidencing that that the beneficiary actually received a salary from the foreign company. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner also submits seven invoices for the claimed foreign company from August 2006 until December 2007. In addition, the petitioner submits photographs of the claimed foreign company.

On appeal, the petitioner fails to provide any evidence to overcome the numerous issues discussed in the unclassified memorandum that was sent to the petitioner with the NOIR based on the beneficiary's visa interview. The petitioner failed to discuss the issue that the foreign company is no longer doing business and that the beneficiary could not corroborate the claim that she was the general director for the foreign company. Furthermore, the petitioner did not provide any evidence to overcome the claim that the beneficiary was employed as a secretary rather than a General Director. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The petitioner presented insufficient evidence to overcome the grounds for revocation. For the reasons discussed above, the appeal will be dismissed and the petition revoked.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed. The petition is revoked.